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EXAMINER

CINTINS, IVARS C

ART UNIT

PAPER NUMBER

1724

21

DATE MAILED: 04/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/325,599

Applicant(s)
De Geldere et al.

Examiner
Ivars Cintins

Art Unit
1724



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Jan 25, 2002

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-4 and 6-38 is/are pending in the application.

4a) Of the above, claim(s) 1-4 and 6-23 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 24-28, 30-33, and 36-38 is/are rejected.

7) ☒ Claim(s) 29, 34, and 35 is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) ☐ Other:

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Applicant's election with traverse of Group II, claims 24-38, in Paper No. 20 is acknowledged. The traversal is on the grounds that the subject matter of both groups is sufficiently related to allow for examination of all the claims together. This is not found persuasive because the fluid processing set of Group I does not require the means for removing excess photochemical agent and/or photoactivation by-products of Group II, and the fluid processing set of Group II does not require the holder for receiving and temporarily holding the container of the second portion during a processing step of Group I, as evidenced by claims 1 and 24. Also, the fluid processing set of Group I does not require a second container which is integrally connected to the first container, and the fluid processing set of Group II does not require the tubing of Group I, as further evidenced by claims 1 and 24. Therefore, since the inventions of groups I and II are distinct for the reasons given above, and since these inventions have acquired a separate status in the art as shown by their different classification and divergent subject matter, and since the searches for the individual Groups are not coextensive, restriction for examination purposes is deemed to be proper.

Accordingly, the restriction requirement is still deemed proper, and is therefore made **FINAL**. Claims 1-4 and 6-23 are

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withdrawn from further consideration, as being directed to non-elected inventions.

The following is a quotation of the second paragraph of 35

U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 28, 32, 33 and 36 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The term "associated with" (claim 28, lines 3-4; claim 32, line 4; claim 33, line 8; and claim 36, line 2) is indefinite as to the structural interrelationships between the recited elements.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-28, 30-33, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bischof (U.S. Patent No. 5,536,238) in view of D'Silva (U.S. Patent No. 6,158,319).

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Bischof discloses a biological fluid processing device comprising a first container (14) for receiving a biological fluid and a photochemical agent (see col. 4, lines 38-39), a second container (16) for receiving biological fluid, an openable flow path (58, 60, 62, 64, 66) between the two containers, and means (12) for removing excess photochemical agent and/or photoactivation by-products from the fluid. Accordingly, this primary reference discloses the claimed invention with the exception of the use of integrally connected containers, a container for the photochemical agent (claims 25, 30, 37 and 38), the location of the removing means (claim 26), the number of collection containers (claim 27), and the overwrap for the photochemical agent container (claims 37 and 38). D'Silva discloses a device for treating a biological fluid with light, which device includes a drawer (10) for holding a plurality of biological fluid containers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of the primary reference with the treating device of D'Silva, in order to facilitate handling of the biological containers of the primary reference system. Applicant should note that upon such modification, the first and second containers of Bischof will effectively be "integrally connected" to one another in sections 12a and 12b of drawer 10. Also, it would

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have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of the thus modified primary reference with a separate container for the photochemical agent to be added to the first container (see col. 4, lines 38-39), in order to conveniently store this material prior to its use. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the thus modified primary reference with a conventional "overwrap" for this photochemical agent container, in order to prevent premature activation of the photochemical agent contained therein. The exact location of the removing means, and the exact number of collection containers employed are not seen to materially affect the overall operation of the reference device, or to produce any new and unexpected result; and are therefore deemed to be obvious matters of choice in design, insufficient to patentably distinguish claims 26 and 27.

Claims 29, 34 and 35 are objected to as being dependent upon a rejected base claim, but would be allowed if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Claim 36 would also be allowed if rewritten in independent form to include all of the limitations of the base claim and any intervening claims, and if

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further amended to overcome the above rejection under 35 U.S.C. § 112.

Toews et al (U.S. Patent No. 3,707,806) discloses integrally connected containers.

Applicant's arguments filed May 14, 2001 have been noted and carefully considered, but no longer appear to be relevant in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

The fax phone numbers for this art unit are: (703) 872-9311 for "Official" faxes after Final Rejection; (703) 872-9310 for all other "Official" faxes; and (703) 872-9492 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Ivars Cintins
Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
April 7, 2002